

CIVIL SERVICE COMMISSION MINUTES

May 15, 2002

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin
Barry I. Newman
Roy Dixon

Absent were:

Sigrid Pate
Mary Gwen Brummitt

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
May 15, 2002

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,10,16,17,20,21		6,7,8,9	

COMMENTS Motion by Newman to approve all items not held for discussion;
seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

No items for discussion.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of April 17, 2002.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Paul Roberts**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

3. Commissioner Dixon: **Rhonda Jackson**, Intermediate Clerk Typist, appealing an Order of Suspension and Charges from the Department of Animal Control.

Confirmed.

4. Commissioner Austin: Richard Pinckard, Esq., on behalf of **Larry T. Bulow**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

Confirmed.

DISCIPLINES

Findings

5. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Lori Kuhn**, former Registered Veterinary Technician, appealing an Order of Termination and Charges from the Department of Animal Control.

FINDINGS AND RECOMMENDATIONS:

Appellant was a Registered Veterinary Technician in the Department of Animal Control. The appeal was duly noticed for hearing on April 18 and 19, 2002. However, prior to the commencement of the hearing, representatives of the two parties entered into a Settlement Agreement and Release of All Claims. As part of the Settlement, Appellant submitted a withdrawal of her appeal. The hearing officer, after reviewing the Settlement and Release of All Claims and supporting documentation, determined that, given the public policy favoring resolution of disputes without litigation; given the uncertainty of the outcome of appeals; and given the potential for subsequent litigation, the public would best be served if the Commission approves the withdrawal of this Civil Service Appeal based upon the Settlement Agreement and Release of All Claims of the parties. It is therefore recommended that the withdrawal of Civil Service Appeal, filed with the Commission on April 25, 2002, based upon the Settlement Agreement and Release of All Claims of the parties dated April 18, 2002, be approved by the Commission and incorporated herein by reference; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Dixon to approve Findings and Recommendation; seconded by Newman. Carried.

DISCRIMINATION

Complaints

6. **Melissa Roose**, former Confidential Paralegal, Office of County Counsel, alleging age, gender, and non-job related factor discrimination by the Office of County Counsel. (Continued from the Commission meeting of April 17, 2002)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Brummitt assigned.

7. **Esteban (Steve) Zemacki**, Drafting Technician III, Department of Public Works (DPW), alleging discrimination in the form of reprisal by DPW subsequent to having filed a discrimination complaint against DPW.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See No. 14)

Staff recommendation approved. Commissioner Newman assigned.

8. **Steven B. Ruff**, Sheriff's Sergeant, alleging non-job related factor (political activities) discrimination by the Sheriff's Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See No. 11)

Staff recommendation approved. Commissioner Pate assigned.

9. Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, Human Resources Analyst, Department of Human Resources (DHR), alleging age, gender, race, orientation and other non-job related factors discrimination by DHR.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See Nos. 12, 13 & 20)

Staff recommendation approved. Commissioner Dixon assigned.

Findings

10. Commissioner Newman: **Jonathan Galloway**, Analyst I, Health and Human Services Agency (HHSA), alleging retaliation discrimination by HHSA.

FINDINGS AND RECOMMENDATIONS:

Employee submitted a complaint alleging retaliation discrimination by HHSA. The matter was referred to OIA for investigation. During the course of the investigation, settlement discussions between HHSA and Employee commenced and resulted in a written agreement between the parties. The agreement is a letter from HHSA and it remedies Employee's primary complaint of failing probation as a Administrative Analyst II. The letter also contained a signed acknowledgement from Employee stating that he would begin a new probationary period. The investigating officer was concerned that the above personnel actions may not fully comply with Civil Service Rules, i.e., Employee was not reinstated from an employment list and there is no provision for a new probationary period if HHSA'S intention was to make him whole. Taking everything into consideration, the hearing officer believes that the public would be best served if the Commission adopts the following recommendations: (1) ratify the personnel actions contained in the above-state settlement letter; and (2) accept Employee's withdrawal of request for discrimination investigation. It is therefore recommended that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Dixon. Carried.

INVESTIGATIONS

Complaints

11. **Steven B. Ruff**, Sheriff's Sergeant, requesting an investigation into alleged improper personnel practices in the Sheriff's Department.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See No. 8)

Staff recommendation approved.

12. Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, Human Resources Analyst, DHR, requesting an investigation into alleged improper personnel practices in DHR.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See Nos. 9, 13 & 20)

Staff recommended approved.

SELECTION PROCESS

Complaints

13. Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, Human Resources Analyst, DHR, appealing her non-selection for the classification of Senior Human Resources Analyst by DHR.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See Nos. 9, 12 & 20)

Staff recommendation approved.

14. **Esteban (Steve) Zemacki**, Drafting Technician III, DPW, appealing DHR's decision that he is ineligible to compete in the recruitment for the classification of Geographic Information Systems Analyst.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See No. 7)

Staff recommendation approved.

15. **Edward del Toro**, Equipment Operator, DPW, appealing his non-selection for the classification of Senior Equipment Operator by DPW.

RECOMMENDATION: Hold in abeyance pending completion of the Office of Internal Affairs' investigation.

Staff recommendation approved.

16. Wendell Prude, S.E.I.U. Local 2028, on behalf of **Nancy Brown**, Probation Aide, Department of Probation, appealing DHR's decision that she is ineligible to compete in the recruitment for the classification of Deputy Probation Officer.

RECOMMENDATION: Deny Request.

Wendell Prude, S.E.I.U. Local 2028 on behalf of Appellant explained that after being interviewed and placed on an employment list and then taken off the list due to Department error, Appellant feels the process is unfair due to subjectivity. Mr. Prude pointed out that persons who apply for County positions who do not currently work within the County are not subject to the scrutiny that County employees are subjected to, therefore, allegedly prejudicing applicants. Mr. Prude felt that an unfair measuring tool was used to qualify outside applicants.

Jessica Bryden, the DHR analyst who initially qualified Appellant, verbalized that she had made a mistake and, as a result, Appellant's name was taken off the employment list. She realized after the fact, that Appellant's current classification did not meet the requirements for the job. Both Larry Cook, Executive Officer, and Carlos Arauz, Director of Human Resources emphasized that consistency in the hiring practice is extremely important to the County.

**Motion by Dixon to grant a Rule X hearing; seconded by Newman.
Carried. Commissioner Pate assigned.**

**Ayes: Austin, Dixon
Noes: Newman
Absent: Pate, Brummitt**

Findings

17. Commissioner Pate: **Daniel Vasquez**, Administrative Analyst II, HHSA, appealing DHR's decision that he is ineligible to compete in the recruitment for the classifications of Senior Accountant and Administrative Analyst III.

FINDINGS AND RECOMMENDATIONS:

A hearing was conducted on April 24, 2002 regarding DHR's decision that Appellant did not meet the minimum qualifications (MQs) to compete for the classifications of Senior Accountant and Administrative Analyst III.

Prior to and during the hearing, Appellant presented the following primary positions relating to DHR's determination that he did not meet the MQs for the two positions: (a) he met the education and experience requirements; (b) a DHR analyst had determined that he met the MQs for both classifications, including four years and three months as an Accounting Technician/Staff Auditor wherein the former HHSA Assistant Director wrote in 1998 that Appellant's duties were equivalent to that of a Junior Accountant. DHR accepted this assertion for the purpose of determining MQs in another exam process. More recently, A DHR Analyst determined that he met the MQs for Administrative Analyst III, and a separate DHR Analyst determined that he met the MQs for Senior Accountant, in part, based on support letters; (c) DHR vacillated in its decision-making.

DHR presented the following primary reasons prior to and during the hearing: (a) apologized to Appellant for inconsistencies; (b) change in policy regarding acceptance of support letters; (c) the Department is in the process of reviewing all written policies, including policy re support letters; (d) support letters were not accepted from any applicants in these two exam processes; and (e) Appellant did not meet MQs even if support letters had been accepted.

While acknowledging DHR's inconsistencies and confusion in these two exam processes, the hearing officer strongly encouraged DHR to place its policy in writing and to communicate it to appropriate personnel throughout the County, as well as placing the policy on job bulletins or other documents so that all employees are informed of the discontinuance of acceptance of support letters in the exam processes. The hearing officer further concluded that Appellant was disadvantaged in that he was informed by DHR on several occasions that support letters would be allowed.

Rather than scrutinizing Appellant's qualifications in these two exam processes, the hearing officer relied on the two separate analysts who apparently accepted the support letters, and who determined that he met the MQs for both exam processes. It is therefore recommended that the Civil Service Commission determine that Appellant meets the minimum qualifications for Administrative Analyst III and Senior Accountant; that the Commission determine that Appellant be placed on the employment lists following calculations of scores; that a recommendation be given to DHR to establish a clearly written policy on the disallowance of support letters for the purpose of establishing minimum qualifications,

to widely communicate that policy, and to report back to the Commission when accomplished; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of the approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Dixon. Carried.

18. **Korinne Davis**, appeal of removal of her name by DHR from the employment list for Correctional Deputy Probation Officer I.

19. **Edward F. Camarena**, appeal of removal of his name by DHR from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify Item Nos. 18 & 19. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 18 and 19 ratified.

OTHER MATTERS

Seal Performance Appraisal

20. Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, Human Resources Analyst, DHR, requesting an investigation and sealing of a Performance Appraisal for the period August 11, 2001 to February 11, 2002.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See Nos. 9, 12 & 13)

Ms. Perfili, on behalf of Appellant, addressed the Commission regarding this item, as well as related item nos. 9, 20 and 13. She explained that Appellant has been offered employment in another Department and would like the Performance Appraisal for the period August 11, 2001 to February 11, 2002 sealed prior to the Rule XI investigation, requested in Item No. 12 above.

The Commission questioned whether a performance appraisal could be temporarily sealed until further investigation could ensue. Ralph Shadwell, Sr. Deputy County Counsel, advised that an appraisal cannot be temporarily sealed, however, the Commission could vote to permanently seal.

Not wishing to make a preliminary decision on this matter without input from the Department, the Commission advised Appellant and her counsel that the performance appraisal in question has no bearing on whether Appellant can apply for and accept other positions within the County.

Motion by Dixon to approve staff recommendation to hold this matter in abeyance; seconded by Newman. Carried.

21. **Vanessa Page**, former Protective Services Worker I, HHSA, requesting the sealing of a Performance Appraisal for the period March 9, 2001 to September 9, 2001.

RECOMMENDATION: Deny Request.

Appellant was dismissed from her classification prior to the successful completion of her probationary period. It is appellant's position that after reluctantly signing the appraisal, she changed her mind and informed her supervisor that she wished to appeal the appraisal.

The Agency's position is that appellant elected not to appeal her performance evaluation as noted by her striking out her name and initialing her action on the evaluation. Appellant contends that she was told that her request was lost due to a change in personnel. The Agency contends that Appellant's request for an appeal was never received.

Both parties spoke to the Commission on this matter. Although convoluted, the Commission voted to deny Appellant's request, based largely on the fact that Appellant's remedy is limited. Commissioner Newman instructed staff to look further into this matter in an attempt to untangle the facts presented by the parties.

**Motion by Dixon to accept staff recommendation; seconded by Newman.
Carried.**

Extension of Temporary Appointments

22. Department of Public Works

A. 1 Senior Transportation Specialist (John Davenport)

B. 1 Assistant Airport Manager (Christopher Cooper)

23. Health and Human Services Agency

5 Recreational Care Worker Trainees (Bobbie Schorr, Sandra Carbajal, Beverly Mae Yalong, Alma Montez, Bianca Martinez)

24. Agriculture/Weights & Measures

1 Insect Detection Specialist I (Robert Bryant)

25. Alternate Public Defender

2 Deputy Alternate Public Defenders (Timothy Brackney, Berta MacKinnon)

RECOMMENDATION: Ratify Item Nos. 22-25.

Item Nos. 22-25 ratified.

26. Public Input.

ADJOURNMENT: 4:00 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JUNE 19, 2002.